

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENTS TO
MAINE RULES OF CIVIL PROCEDURE

2015 Me. Rules 03

Effective: May 1, 2015

All of the Justices concurring therein, the following amendments to the Maine Rules of Civil Procedure are adopted to be effective on the date indicated above. The specific amendments are stated below. To aid in understanding of the amendments, an Advisory Note appears after the text of each amendment. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule 76H of the Maine Rules of Civil Procedure is deleted and replaced with the following:

RULE 76H. ELECTRONIC SOUND RECORDING

(a) Establishment of mechanism for recording. The Administrative Office of the Courts and each Probate Court shall provide a mechanism by which the sound from any courtroom proceeding may be electronically recorded.

(b) Court's Recording of Proceedings.

(1) The court may record any proceeding.

(2) The court must record any proceeding that

(A) any statute, court rule, or administrative order requires be recorded; or

(B) any party requests, at least 24 hours before the start of the proceeding, be recorded.

(3) At all times, the operation of the recording equipment shall be subject to the direction and order of the court, subject to all applicable statutes, rules, and

administrative orders, and subject to any right of any party to have the proceeding recorded.

(c) Independent Recordings.

(1) *When There is No Recording by the Court.* Except as provided in paragraph (3), any party or counsel may independently record or transcribe a proceeding that is not recorded by the court upon notice to the court and all parties.

(2) *When There is a Recording by the Court.* Except as expressly permitted by the court, no party or counsel may independently record or transcribe a proceeding that is recorded by the court.

(3) *Order prohibiting independent recording.* The court may prohibit any independent recording or transcription

(A) In any child protection proceeding;

(B) In any proceeding for protection from abuse;

(C) In any proceeding closed to the public by statute, court rule, or court order;

(D) When the court determines that an independent recording or transcription would create a risk to public safety; or

(E) When the court determines that prohibition of an independent recording or transcription is necessary to prevent intimidation of a witness or to protect an individual from harassment.

(4) *Conditions on party's or counsel's recording.* When a party or counsel is permitted to independently record a proceeding, the recording must be made at the expense of that party or counsel and without disrupting any part of the proceeding.

(5) *Non-Party Requests to Record.* A person who is not a party or counsel to a proceeding may record the proceeding only as permitted by Cameras and Audio Recording in the Courts, Me. Admin. Order JB-05-15, as amended.

(d) Official Record. When the court has not created a record, a transcript of a recording created independently by a party or by counsel shall become part of the official record of that proceeding after all parties have had an opportunity to review the transcript and do not object to it, or to a part of it, as inaccurate, incomplete, or misleading, unless the court determines after review of the transcript that the transcript, or a part of it, is inaccurate, incomplete, or misleading. If the transcript is offered for placement in the official record, or if the transcript is challenged, the court may require the production of the original recording.

(e) Transcription of a Court Recording.

(1) *In General.* Except as otherwise ordered by the court, any party may request a transcript of a proceeding that has been recorded by the court, and any person or organization may request a transcript of a proceeding that is open to the public.

(2) *Cost of Transcript.* The person or organization ordering a transcript of a proceeding that has been recorded by the court must pay the cost of the transcript before the transcript will be provided, except when the court is authorized to approve, and has approved, the transcription at the State's expense. The fees that will be charged for transcript production are established in Revised Court Fees Schedule and Document Management Procedures, Me. Admin. Order JB-05-26, as amended.

(3) *Transcript on Appeal.*

(A) *Appeal to the Law Court.* In an appeal to the Law Court, the transcript of a proceeding that has been recorded by the court must be ordered and transmitted as provided in M.R. App. P. 5(b) and 6(c).

(B) *Appeal to the Superior Court.*

(i) *Transcript Order.* An appellant must file with the notice of appeal a fully completed transcript order form in order to include in the record on appeal from the District Court to the Superior Court a complete or partial transcript of a proceeding that has been recorded by the court. If the appellant does not order a transcript of the proceeding that has been recorded by the court or does not order the entire transcript, the appellee may, within 10 days after being served with the notice of appeal, order a transcript of all or any portions of the proceeding by filing and serving on all other parties a

fully completed transcript order form. The ordering party must pay for the transcript as provided by M.R. App. 5(b).

(ii) *Transmission of Transcript.* Immediately upon completion of the transcript of a proceeding that has been recorded by the court, the office designated by administrative order must transmit the original of it to the clerk of the Superior Court for filing and inclusion in the record on appeal. The clerk shall serve notice of the filing upon all parties.

(4) *Correction of Transcript.* If either party claims an error in the transcript of a proceeding that has been recorded by the court, such error may be corrected at any time by order of the court.

(f) Standards and procedures. The Administrative Office of the State Courts and each Probate Court must establish in their respective courts standards and procedures to ensure that a clear recording is made of any recorded proceeding, that the transcriptionist has all information necessary to produce an accurate transcript, and that a timely and accurate transcript is produced upon request of an authorized person. The established standards and procedures must include, but are not necessarily limited to, standards and procedures relating to

- (1) The courtroom operation of the electronic recording equipment;
- (2) The creation of a written record of any necessary information;
- (3) The retention of the recording and written records;
- (4) The transmission of the recording and written records to the transcriptionist;
- (5) The transcription of the recording and the filing of the transcript with the court; and
- (6) The retention and destruction of the recording and written records.

(g) Applicability. This rule governs only the recording and case-related use of the recording by the court, the parties, or counsel, not any potential recording or transmission of a recording by other entities, which is governed by Cameras and Audio Recording in the Courts, Me. Admin. Order JB-05-15, as amended.

Advisory Note
April 2015

Pursuant to Recording of Trial Court Proceedings, Me. Admin. Order JB-12-1 (as amended by A. 11-14) (effective Nov. 24, 2014), all proceedings of certain case types in the State trial courts must be “recorded and monitored by a court clerk or other court personnel whose primary function in the courtroom is to monitor the recording pursuant to standards issued by the Office of Transcript Operations.” *Id.* § II. The Administrative Order also provides that, even if a given proceeding is not among those that are routinely recorded, it “shall be recorded at the request of any party or at the request of the presiding justice or judge.” *Id.* § IV.

This rule applies to the Probate Court through Rule 76H of the Maine Rules of Probate Procedure and to criminal proceedings pursuant to Rule 27 of the Maine Rules of Unified Criminal Procedure.

The amendment to this rule is intended to clarify the process for civil and criminal proceedings, ensure that probate proceedings involving fundamental rights or liberty are also recorded, and to clarify that trial courts do have the discretion to limit independent recording and transcription in certain cases. *See, e.g.*, 22 M.R.S. § 4007.

2. Rule 77(b) of the Maine Rules of Civil Procedure is amended to read as follows:

RULE 77. SUPERIOR AND DISTRICT COURTS AND CLERKS

....

(b)(1) ~~Trials and Hearings; Orders in Chambers.~~ Trials and Hearings; Orders in Chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a justice or judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the county or division where the action is pending.

~~(2) *Recording.* In District Court, 24 hours advance notice is required for recording of any civil proceeding. Except by special order of the court, no record will be made in any court of civil nontestimonial matters.~~

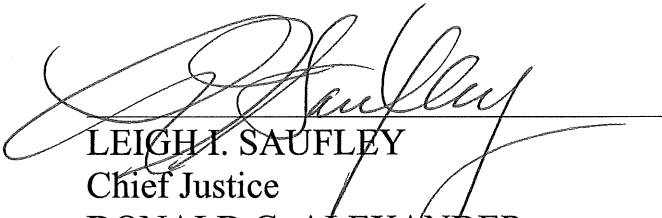
**Advisory Note
April 2015**

Rule 77(b)(2) is deleted because the content of that provision is superseded by provisions contained in Rule 76H(b). Former subdivision(b)(1) is reformatted as subdivision (b).

3. These amendments shall be effective on May 1, 2015.

Dated: April 27, 2015

FOR THE COURT¹


LEIGH I. SAUFLEY
Chief Justice
DONALD G. ALEXANDER
ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
JEFFREY L. HJELM
Associate Justices

¹ This Rule Amendment Order was approved after conference of the Court, all Justices concurring therein.